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June 26, 2014

Mr. Chris A. Stewart, PE
Project Manager
HMB Professional Engineers, Inc.
3 HMB Circle
U.S. 460
Frankfort, Kentucky 40601

PSC STAFF OPINION 2014-010

Re: Southern Madison Water District
Request for an Advisory Opinion

Dear Mr. Stewart:

Commission Staff acknowledges receipt of your June 16, 2014 letter on behalf of Southern Madison Water District ("SMWD") in which you request an opinion regarding the necessity of obtaining a certificate of public convenience and necessity ("CPCN") for the proposed construction of a new water storage tank in Madison County, Kentucky. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter, Commission Staff understands the facts as follows:

SMWD is a water district organized pursuant to KRS Chapter 74 that owns and operates water distribution facilities in Garrard and Madison counties that serve approximately 4,896 customers.¹

SMWD proposes to construct a water storage tank off of Mason Lake Road in Madison County, Kentucky. SMWD would build a 100,000 gallon ground storage tank, which would include approximately 920 feet of 8-inch

¹ Annual Report of SMWD to the Kentucky Public Service Commission for the Year Ended December 31, 2013 at 5, 27.

polyvinylchloride water transmission main and appurtenances. This project would also include modifications to an existing pump station. SMWD asserts that the proposed project will provide improved water pressure and flow to its customers as well as an emergency water supply to the area.

The total cost of the project, based on the lowest bid received by SMWD, is estimated at \$316,600. The project will be funded by a grant of \$156,500 from the Appalachian Regional Commission and through local funds. SMWD asserts that there will not be a rate increase as a result of this project, and that no new customers are being added.

KRS 278.020(1) provides:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Administrative Regulation 807 KAR 5:001, Section 15(3), further states:

A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

In its 2012 General Session, the Kentucky General Assembly enacted legislation that is effective through June 30, 2014 which further defines when a certificate is required. It provides:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74 and a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity notwithstanding KRS 278.020(1); if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts prescribed for utilities in Kentucky, and either: (a) The water line extension or improvement project will not cost in excess of \$500,000.00; or (b) The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to KRS 278.300. In either case, the water district or water association shall not as a result of the water line extension or improvement project, increase rates to its customers.²

According to its Annual Report, SMWD has a total net utility plant of \$4,871,725.00.³ The proposed project represents an increase in SMWD's total utility plant of 6.5 percent. Additionally, SMWD has represented that the proposed project will not result in increased charges to its customers. Moreover, based upon the facts as presented, SMWD, a Class A water utility,⁴ will not incur any financial obligations requiring the Commission's approval pursuant to KRS 278.300. Therefore, the proposed project falls within the recent legislative exemption to the CPCN requirement.

² 2012 KY. Acts. Ch. 265.

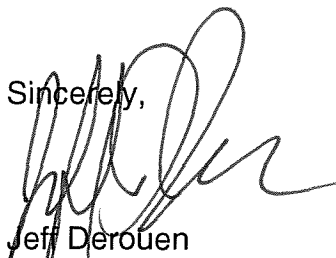
³ Annual Report at 7.

⁴ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$750,000 or more." Uniform System of Accounts for Class A and B Water Districts and Associations at 14 (2002), <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>.

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This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Aaron Ann Cole, Staff Attorney, at (502) 564-3940.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen", written over the word "Sincerely,".

Jeff Derouen
Executive Director

AAC/kar